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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,096	04/16/2004	Harry E. Dantolan	HD-04-01	9253
29055	7590	06/12/2006	EXAMINER	
PHILIP H. KIER 321 HOME AVENUE OAK PARK, IL 60302			LEWTN, ALLANA	
			ART UNIT	PAPER NUMBER
			3764	
DATE MAILED: 06/12/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/826,096

Applicant(s)

DANTOLAN, HARRY E.

Examiner

Allana Lewin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 8 and 10 is/are rejected.
- 7) ☐ Claim(s) 5, 7 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 5 is objected to because of the following informalities: it is unclear which weight is being referred to by "the weight" in line 2. As best understood by the Examiner, Applicant is referring to the 'permanent weight' recited in claim 10, however appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dantolan (US Pat. No. 5,474,511) in view of Buchner (US Pat. No. 3,761,083) and Hamilton (US Pat. No. 5,312,308).

4. Dantolan discloses a reciprocating weight exercise device comprising a rigid tube with a first and a second end (1), first and second coil springs (8, 7) with the tube deployed within the coil springs (note Figure 3B), a permanent weight between the coil springs that is adapted for sliding along the length of the tube and able to compress the coil springs (note Figure 3B), a first slidable handle (13), adapted for sliding along the length of the tube (column 3, line 46-48) adjacent to the first coil spring (note Figure 3B),

and a second slidable handle (14), adapted for sliding along the length of the tube (column 3, line 46-48) adjacent to the first coil spring (note Figure 3B).

5. Dantolan fails to disclose stationary handles or shock absorbing means on each end of the tube.

6. Buchner teaches an exercise device with first and second stationary handles affixed to each end of the tube (5, 7), as well as a spring (13) positioned on the tube adjacent to the stationary handle (note Figure 1) which functions as a resistance means but also inherently as a shock absorbing means, as evidenced by Hamilton. Hamilton discloses an exercise device where a coil spring member (21) accommodates impact of weight members (17) against a handle (11, and note column 3, lines 19-30), and therefore the spring member functions as shock absorbing means.

7. Based on the teachings of Buchner and Hamilton, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized stationary handles with the Dantolan device to provide a more secure and stable grip while using the device, as well as to allow for more exercises to be performed with the device thereby increasing its functionality. Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized shock absorbing means with the Dantolan device so as to lessen the impact on a user's hands, thereby preventing injury and discomfort, making the device safer and more enjoyable to use.

8. Regarding claims 2 and 3, a tube with swaged end is an obvious design choice and does not have any patentable weight. There are numerous methods in which the

stationary handles can be affixed to the tube that would prevent them from leaving the device. Further, the slidable handles would be maintained on the tube by the stationary handles.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dantolan in view of Buchner as applied to claims 1-3 above, and further in view of Breems (US Pat. No. 5,755,644).

10. Dantolan as modified by Buchner, discussed above, fails to disclose the shock absorbing means to include an O-ring and a bushing.

11. Breems discloses an exercise device comprising an elongated tubular member that, in use, is subjected to a force and therefore employs shock absorbers comprising an O-ring and a bushing (column 7, lines 17-29) in order to resist shock from impact.

12. Based on the teaching of Breems and that it is very common for shock absorbers to be composed of O-rings and bushings, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized an O-ring and a bushing in Dantolan modified supra so as to enhance the shock absorption of the device, thereby adding more protection and comfort to one using the device.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dantolan in view of Buchner as applied to claims 1-3 above, and further in view of Wilkinson (US Pat. No. 5,788,608).

14. Dantolan as modified by Buchner, discussed above, fails to disclose the shock absorbing means to include a bushing.

15. Wilkinson discloses an exercise device that includes a shaft that is subjected to a force and thus further comprises a shock-absorbing embodiment including a spring and a bushing (column 12, lines 34-37) that functions to counteract the shock from the imparted force.

16. Based on the teaching of Wilkinson and that it is very common for shock absorbers to be composed of a spring and a bushing, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a bushing in Dantolan modified supra so as to enhance the shock absorption of the device, thereby adding more protection and comfort to one using the device.

17. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wilmoth et al. (US Pat. No. 3,938,803) in view of Dantolan (US Pat. No. 5,474,511).

18. Wilmoth discloses an exercise device comprising a rigid bar or tube (2); a first stationary handle (3) and a second stationary handle (4); first and second coil springs (13), with the tube being deployed within the coil springs (note Figure 1); a first slidable handle (7b) adjacent to the first coil spring, and a second slidable handle (8b) adjacent to the second coil spring; first and second auxiliary weights (11, 12); and first and second shock absorbing means adjacent the first and second stationary handles provided by shoulders (17, 18) of the stationary handgrips (note Figure 1) as Wilmoth teaches that as external force is exerted on the slidable grips (7, 8) is released the

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springs urge these grips into engagement with the shoulders (column 2, lines 62-65).

The stationary handles (3, 4) are made of molded plastic or similar material (column 2, lines 8-14) and accordingly so are the shoulders and they would therefore inherent dissipate and absorb the shock of the impact of the slidable grips.\

19. Wilmoth fails to disclose a permanent weight for sliding along the length of the tube and between the coil springs.

20. Dantolan discloses an exercise device comprising a permanent sliding weight (2) between first and second coil springs and having sufficient weight to compress the springs. The permanent sliding weight enables the user to perform varied resistance exercises with the device and provides an degree of added resistance in addition to the resistance provided by the springs against movement of the sliding members (13, 14).

21. Based on the teachings of Dantolan, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have utilized a permanent sliding weight in the Wilmoth device in order to provide added resistance for a user exercising with the device thereby adding functionality and versatility to the device, with the permanent weight placed between the first and second auxiliary weights and therefore the first auxiliary weight being attached to one side of the permanent weight and the second auxiliary weight being attached to the opposite side of the auxiliary weight.

***Allowable Subject Matter***

22. Claims 5, 7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

23. Applicant's arguments filed November 14<sup>th</sup>, 2005 have been fully considered but they are not persuasive. Examiner respectfully disagrees with Applicant's assertion that the combination of Dantolan and Buchner does not teach all the limitations of claim 1 and that it lacks first and second shock absorbing means. The springs on the Buchner device would inherently provide shock absorption for one using the device, this being further taught by Hamilton, and therefore meets Applicant's limitation of first and second shock absorbing means.

24. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Wilkinson provides a general teaching of using a spring and a bushing in an exercise device to absorb the shock of an impact. It is generally well known to utilize springs and bushings



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as suitable shock absorbing means, as shown by Wilkinson. Therefore, in order to provide appropriate, adequate and inexpensive shock absorbing means in an exercise device for user, the use of springs and bushings is generally known.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allana Lewin whose telephone number is 571-272-5560. The examiner can normally be reached on Monday-Friday, 9AM-5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AL 

June 5<sup>th</sup>, 2006

  
STEPHEN R. CROW  
PRIMARY EXAMINER  
ART UNIT 332